

**ITEM 12**  
**LEGISLATIVE SUBCOMMITTEE UPDATE**  
**PROPOSED LANGUAGE REGARDING**  
**RECONSIDERATION/AMENDMENT OF PRIOR DECISIONS**

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**Background**

On April 23, 2009, Assembly Budget Subcommittee Number 4 was briefed on the recent *California School Boards Association v. State of California* appellate court decision.

Because the court found legislatively directed reconsiderations in AB 138 to be unconstitutional, the subcommittee directed the Legislative Analyst's Office (LAO), Department of Finance (DOF), commission staff and legislative staff to form a working group to develop legislation to establish a mandate reconsideration process consistent with the court decision.

In response to Budget Committee staff's request for comments/proposals, Commission staff prepared comments for the committee hearing and later a working draft for discussion. (See Exhibit A.)

**Staff's Draft Proposal**

Staff's draft proposal would allow the Commission to amend a test claim decision upon a showing that there has been a subsequent change based upon new or different facts, circumstances, or mandates law upon which the Commission or the Board of Control relied upon in making its decision, and that this subsequent change modified the state's liability for mandate reimbursement pursuant to article XIII B, section 6 of the Constitution.

A request to amend a test claim decision could be filed by any party, statewide association, or the Department of Finance, Controller, or other affected state agency or interested party. Budget Committee and LAO staff would like to establish a process that would also allow the Legislature or an individual legislator to request reconsideration.

A statute of limitations for filing requests to amend is proposed as follows:

- For any subsequent change that occurred prior to January 1, 2010, and subsequent to the adoption of any test claim decision, a request must be filed not later than January 1, 2011.
- For any subsequent change that occurs after January 1, 2010, and subsequent to the adoption of any test claim decision, a request must be filed not later than 12 months following the effective date of the change.

The working draft also includes procedures for filing such requests, and proposes that the amendment of a test claim decision shall be effective in the fiscal year following the Commission's action to amend a test claim decision. The Commission would also be authorized

to adopt or amend parameters and guidelines or reasonable reimbursement methodologies to conform to the amendment of the test claim decision.

**Interested Parties**

On May 12, 2009, in a joint letter to the Members of Assembly Budget Subcommittee Number 4, the California School Boards Association (CSBA), California State Association of Counties (CSAC) and the League of California Cities (League) requested that their organizations have the opportunity to be fully represented in any discussion over possible statutory changes to mandates statutes in response to the holding in the recent CSBA court decision.

**Current Status**

On May 29, 2009, the Commission formed a Legislative Subcommittee (Paul Glaab and Sarah Olsen ) to work with staff and interested parties in developing a legislative proposal.

The Assembly Budget Subcommittee Number did not convene any working group meetings before adjournment.

On October 15, 2009, the Bureau of State Audits (BSA) issued Report 2009-501, *State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities*. The BSA report recommends that the Commission and the Legislature establish a reconsideration process that will allow mandates to be revised when appropriate. Implementation of this recommendation would require the Commission staff to prepare and submit a legislative proposal to the Governor's Office by November 15, 2009.

October 30, 2009 Legislative Subcommittee Meeting (See Exhibit B)

Prior to the Commission meeting, the Legislative Subcommittee will meet with interested parties and state agency staff to review staff's working draft prepared for the Assembly Budget Subcommittee. A report on this meeting will be made to the Commission.

**COMMISSION ON STATE MANDATES  
COMMENTS ON ISSUE 3**

The Committee agenda requests comments from the Commission on State Mandates. The comments offered today are made by staff and do not reflect the views of individual Commissioners or the Commission itself.

**CSBA V. STATE OF CALIFORNIA,  
COURT DECISION**

The Committee agenda states that the Legislature should establish a reconsideration process for the Commission.

Defining a new reconsideration process for prior Commission decisions is a significant policy issue for the State and local governments.

**EXISTING LAW**

**Commission's Statutory Authority to Reconsider**

- The Commission may reconsider a prior decision on petition of any party. (Gov. Code, § 17559, subd. (a).)
- The power to order reconsideration expires 30 days after the statement of decision is delivered or mailed to the claimant. May be extended 30 days.
- If no action is taken on petition within the time allowed, petition shall be deemed denied.
- Two step Commission process:
  - Decision to reconsider (5 votes required)
  - Reconsideration (5 votes required)

**Court-Ordered Reconsiderations**

- A claimant or the state may initiate a proceeding to set aside a Commission decision on the ground that the decision is not supported by substantial evidence. (Gov. Code, § 17559, subd. (b).)
- The court may order the Commission to hold another hearing on the claim and may direct the Commission on what basis the claim is to receive a hearing.
- The Statute of Limitations is 3 years.

## Legislative Reconsiderations - Unconstitutional

- Since 2004, the Legislature has directed reconsiderations of CSM decisions.
- Last month in *CSBA v. State of California*, the Court of Appeal found legislatively directed reconsiderations unconstitutional as to five (5) reconsiderations: *Open Meetings Act*, *Brown Act Reform*, *Mandate Reimbursement Process I* and *School Accountability Report Cards I, II*.
- The Commission's prior actions based on reconsideration will be set aside on July 31, or September 25, based on the instructions provided in the writ of mandate and the five (5) mandates will be eligible for reimbursement or suspension.
- The court also remanded the *Mandate Reimbursement Process II* test claim back to the Commission to determine whether the test claim statutes impose a reimbursable state-mandated program, consistent with the court's ruling on Government Code section 17556, subdivision (f).

## **NEW RECONSIDERATION PROCESS: Based on a Subsequent Change in Facts or Mandates Law.**

### Subsequent Change in Facts with Same Law

- Initiative (Gov. Code, § 17556, subd. (f).)
- Fee Authority (Gov. Code, § 17556, subd. (d).)
- Federal Mandate (Gov. Code, § 17556, subd. (c).)
- Court Decision (Gov. Code, § 17556, subd. (b).)
- Appropriation/Funding (Gov. Code, § 17556, subd. (e).)

### Subsequent Change in Mandates Law with Same Facts

- Amendments – Article XIII B, Section 6 (Proposition 1A)
- Amendment of Exclusions to Reimbursement (Gov. Code, § 17556 (AB 138).)
- New Case Law changes interpretation or application of mandates law analysis.

### Or Both

## **Issues to Consider in Drafting**

The Committee's agenda touches upon some of the issues that must be considered in drafting a reconsideration statute. Commission staff also raises the following issues:

- Who is authorized to request reconsideration?
- How will the Commission's jurisdiction be defined? Change in facts or mandates law, or both?
- Will a new reconsideration statute be applied retroactively or prospectively?
- Length of the Statute of Limitations for Filing Petition for Reconsideration – 30 days, 60 days, 90 days, 6 months, 3 years from the date of the change in facts or law.
- Is the Commission adequately staffed for completion of timely reconsiderations?

Commission staff is available to work with committee staff, representatives of local governments, and LAO to develop changes to the existing process.

*EXCERPTS*

*California School Boards Association et al. v. State of California, et al. (CSBA)*

(March 9, 2009)

Once the Commission's decision becomes final, whether after judicial review or without judicial review, they are binding, just like judicial decisions.

"Therefore, like a judicial decision, a quasi-judicial decision of the Commission is not subject to the whim of the Legislature. Only the courts can set aside a specific Commission decision and command the Commission to reconsider, and, even then, this can be done only within the bounds of statutory procedure. (Gov. Code, § 17559, subd. (b).)" (*CSBA*, p. 1201.)

... Over time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission's decision. While decisions of the Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances. *CSBA* argues that the most analogous procedure is the inherent power of a court to modify a continuing injunction to take into account changes in the law and material circumstances.<sup>[1]</sup> We conclude that we need not decide this question. (*CSBA*, p. \_\_\_\_.)

In deciding that the Legislature cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside or reconsidered, we do not imply that there is no way to obtain reconsideration of a Commission decision when the law or material circumstances have changed. We only conclude that the Legislature's attempt to force reconsideration in this case violated the separation of powers doctrine. Whether the Commission, exercising inherent powers, may agree to reconsider a decision or the Legislature may provide, generally, a process for obtaining reconsideration of a decision is beyond the scope of this opinion. [Footnote 7 to Government Code section 17559, subd. (a) is omitted.]

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<sup>1</sup> See Cross-Appellant's Reply Brief, page 21, states: Petitioners acknowledge that the Legislature could perhaps amend section 17559 to provide different reconsideration procedures for re-opening a mandate in light of claimed changes in the law, but it pointedly chose not to do so. Footnote number 11 states, No party to the original proceedings requested reconsideration by the Commission for that reason, or otherwise attempted to bring themselves within any theory of continuing jurisdiction. See, for example, Code Civ. Proc., § 533, conferring continuing authority on the courts to modify injunctions.

PROPOSED DRAFT FOR WORKING GROUP DISCUSSION

**Commission Jurisdiction**

(a) The commission may amend a test claim decision upon a showing that there has been a subsequent change based upon new or different facts, circumstances, or mandates law upon which the commission or the Board of Control relied upon in making its decision, and that this subsequent change based on new or different facts, circumstances, or mandates law has modified the state's liability for mandate reimbursement pursuant to article XIII B, section 6 of the Constitution.

**Definitions**

(b) For purposes of this section, the following definitions shall apply:

(1) "Test claim decision" is defined as a decision of the Commission on State Mandates on a test claim filed pursuant to Government Code section 17551 or a decision of the Board of Control, on a claim for state reimbursement filed under Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2227), and Article 3 (commencing with Section 2240) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code prior to January 1, 1985. (See Gov. Code, § 17630). Test claim decision does not include legislatively determined mandates pursuant to Government Code section 17573-17574 or other legislatively determined mandates.

(2) "Mandates law" is defined as published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates or addressing article XIII B of the California Constitution, Government Code sections 17500 and following. "Mandates law" also includes

statutory amendments to Government Code sections 17500 and following and amendments to article XIII B of the California Constitution.

**Authority to Request Amendment and Statute of Limitations**

(c) A request to amend a test claim decision pursuant to this section may be filed by a local agency or school district, statewide association of local agencies or school districts, or the Department of Finance, Controller, or other affected state agency or interested party only if the request is filed within the time limits specified in this section.

(1) For any subsequent change based on new or different facts, circumstances, or mandates law that occurred prior to January 1, 2010 and subsequent to the adoption of any test claim decision, a request to amend a test claim decision may be filed by a local agency, school district, statewide association of local agencies or school districts, Department of Finance, Controller, or other affected state agency or interested party not later than January 1, 2011. This subdivision shall be inoperative on January 1, 2011.

(2) For any subsequent change based on new or different facts, circumstances, or mandates law that occurs after January 1, 2010 and subsequent to the adoption of any test claim decision, a request to amend a test claim decision may be filed by a local agency, school district, statewide association of local agencies or school districts, Department of Finance, Controller, or other interested party not later than 12 months following the effective date of the change based on new or different facts, circumstances, or mandates law.

**Procedures (This is very rough edit of test claim procedures)**

(d) The commission shall adopt procedures for receiving requests to amend a test claim decision filed pursuant to this section and for providing notice and a hearing on those requests. The procedures shall do all of the following:

- (1) Provide for presentation of evidence and legal argument by the requester, interested parties, the Department of Finance, and any other affected state agency or department, and interested persons.
- (2) Permit the hearing to be postponed at the request of any party, without prejudice, until the next scheduled hearing.
- (3) All requests shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:
  - a. The name, case number, and adoption date of the statement of decision.
  - b. A detailed description of the alleged subsequent change based on new or different facts, circumstances, or mandates law, and the operative date of the change.
  - c. A detailed description of the effect of the alleged subsequent change on the test claim decision and findings on reimbursable state-mandated activities and costs mandated by the state.
  - d. The actual estimated annual statewide costs that would or would not be incurred in the next fiscal year, following the amendment of the test claim decision. [statewide estimate?]
  - e. Identification of all of the following, if relevant:
    1. Dedicated state funds appropriated for this program
    2. Dedicated federal funds appropriated for this program
    3. Fee authority to offset the costs of this program
    4. Federal law
    5. Court Decision
    6. State or local ballot measure and date of election.
  - f. A written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge,

information, or belief, and signed by persons who are authorized and competent to do so, as follows:

1. Declarations of actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
  2. Declarations identifying all local, state, or federal funds, or fee authority that may [or may not] be used to offset the increased costs that will or will not be incurred by claimants to implement the alleged mandate or result in a finding of no costs mandated by the state pursuant to section 17556.
  3. Declarations describing new activities performed to implement specific provisions of the test claim statute or executive order alleged to impose a reimbursable state-mandated program.
  4. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.
- g. The written narrative shall be supported with documentation of any subsequent changes based upon new or different facts, circumstances or mandates law.
- h. The request for amendment of test claim decision shall be signed at the end of the document, under penalty of perjury by the requestor or its authorized representative, with the declaration that the request is true and complete to the best of the declarant's personal knowledge, information, or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

- i. If a completed request is not received by the commission within 30 calendar days from the date that an incomplete request was returned by the commission, the original filing date may be disallowed.

### **Effective Date of Amendment**

(e) Amendment of a test claim decision shall be effective in the fiscal year following the commission's action to amend a test claim decision pursuant to this section.

### **Implementation of Amendment**

(f) If amendment of a test claim decision modifies the state's liability for mandate reimbursement pursuant to article XIII B, section 6 of the Constitution, the commission shall adopt or amend the parameters and guidelines or reasonable reimbursement methodology pursuant to section 17557 or 17557.1-17557.2. Any changes made to the parameters and guidelines or reasonable reimbursement methodology shall conform to the amendment of the test claim decision.

[Make conforming changes to SCO authority for duty to adopt revised claiming instructions.]

If necessary, the commission shall adopt a statewide cost estimate on the amendment of a test claim decision. [Optional]

### **Prioritization of Requests for Amendment of Test Claim Decisions**

(g) The commission may prioritize pending requests for amendment of test claim decision based on filing date, statewide significance, or upon agreement of the parties to all pending requests.

May 4, 2009

## OTHER CHANGES THAT MAY BE REQUIRED

### **Reports to the Legislature (Amend other sections)**

The commission shall notify the Legislature pursuant to section 17555, within 30 days of hearing and deciding upon a request for amendment of a test claim decision, and report on this action to the Legislature pursuant to section 17600 and 17601.

WORKING DRAFT

NOTICE AND AGENDA<sup>1</sup>

Meeting of the Legislative Subcommittee  
Commission on State Mandates

Proposed Language Regarding Reconsideration/Amendment of Prior Decisions

State Capitol  
Room 447  
Sacramento, California

Friday, October 30, 2009  
9:30 A.M.

- I. CALL TO ORDER AND ROLL CALL
- II. EXECUTIVE DIRECTOR REPORT ON BACKGROUND AND PROPOSED LANGUAGE
- III. DISCUSSION
- IV. NEXT STEPS
- V. ADJOURNMENT

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<sup>1</sup> This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

